IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1752 OF 2003

Sou.Surekha Sanjay Shriram ...Petitioner
vs.
1.Sanjay Appasaheb Shriram
2.State of Maharashtr ...Respondents

Mr.Umesh Mankapure for the Petitioner
Mr.Machindra Patil for Respondent No.1
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 19,2005

JUDGMENT:

1. The Counsel appearing for the parties were heard for final disposal of the Writ Petition. The Petitioner is the wife of the Respondent No.1. The marriage was solemnised on 9th May 1997 in accordance with Hindu Vedic Rites. The Petitioner filed an application under section 125 of the Code of Criminal Procedure, 1973 (hereinafater referred to as the said Code) for payment of monthly allowance towards maintenance. The learned II Joint Civil Judge (S.D.), Sangli allowed the said application and directed the Respondent No.1 to pay monthly allowance of Rs.800/- to the Petitioner. A Revision Application was filed by the Respondent No.1 for challenging the aforesaid Judgment and Order. The said Revision Application was partly allowed by the learned II Additional Sessions Judge, Sangli. The learned Additional Sessions Judge reduced the monthly maintenance to Rs.400/- p.m. and directed that the same shall be payable from the date of the original

Application.

2. The learned Counsel for the Petitioner submitted that the revisional Court ought not to have interfered with the quantum of maintenance. He invited my attention to the finding recorded by the Trial Court that the Respondent No.1 was holding large agricultural land. He submitted that the reasons given by the Sessions Court for interfering with the order of the Trial Court are perverse.

3. The learned Counsel for the Respondent No.1 relied upon the Affidavit-in-reply. In the said Affidavit-in-reply it is contended that the Petitioner has re-married to one Vilas Metkari and has delivered a child on 25th January 2003. He placed reliance on extract of birth register maintained by Mangalwedha Municipal Council. He submitted that as the Petitioner has re-married, she has no right to claim the maintenance from the Respondent No.1.

4. In reply to the submissions of the learned Counsel for the Respondent No.1, the learned Counsel for the Petitioner relied upon the order dated 24th December 2004 passed by the learned Joint Civil Judge (J.D.) and Judicial Magistrate (F.C.), Sangli in Application No.11/2003. The said application was filed by the Respondent No.1 under section 127 of the said Code for variation of the original order under section 125 of

the said Code on the ground that the Petitioner has re-married on 12th April 2002 and has delivered a baby on 25th January 2003. He pointed out that the Respondent No.1 could not substantiate the said contentions and therefore, the Application came to be rejected.

5. I have considered the submissions. The Trial Court did not accept the case made out by the Petitioner that the Respondent No.1 is earning income from private tuitions. The Trial court referred to 7/12 extract of land bearing Gat No.314 and extract of Form No.8A of Khata No.730. It was held that the said documents show that the Respondent No.1 and his brother were holding land to the extent of 2 Hectares and 43-R and crop like wheat and Jawar was taken from the said land as disclosed from the said extract. The Trial Court also held that there was no other dependant on the income of the Respondent No.1 Therefore, considering the said material on record, maintenance amount was fixed at Rs.800/- p.m.

6. The learned Sessions Judge observed that holding of the land by the Respondent No.1 was only 3 acres and the village of the Respondent No.1 is known for famine. After observing that the respondent No.1 is well educated and able bodied, the learned Sessions Judge held that the Respondent No.1 cannot be made to pay maintenance at Rs.800/- p.m. The Trial Court found on the basis of the revenue record that holding of the

respondent No.1 along with his brother was more than 2 hectares and the 7/12 extract shows that the crops like wheat and Jawar were taken on the said land. There was no reason for the Sessions Court to interfere with the quantum of the maintenance. If the Respondent No.1 is having agricultural land and if he is an able bodied person, maintenance amount fixed at Rs.800/- p.m. cannot be said to be arbitrary.

7. Coming to the submissions regarding subsequent marriage of the Petitioner, perusal of the Judgment and Order dated 24th December 2004 passed in Misc. Application No.11/2003 shows that on the ground of re-marriage of the Petitioner, the Respondent No.1 applied for modification of the order granting maintenance. The Trial Court rejected the application by coming to the conclusion that no evidence was led by the Respondent No.1 to prove the re-marriage of the Petitioner. As of today there is nothing on record to show the said finding recorded by the Trial Court has been challenged by the Respondent No.1 by filing appropriate proceedings. In this view of the matter, the Respondent No.1 cannot support the impugned order by contending that the re-marriage of the Petitioner as proved.

8. Hence, the Writ Petition is allowed by setting aside the Judgment and Order dated 8th September 2003 passed by the Sessions Judge and by restoring the order passed by the

learned Trial Judge on 28th November 2001 in Criminal Misc.Application No.60/2000.

JUDGE